

SECOND REGULAR SESSION

# SENATE BILL NO. 767

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR GOODMAN.

Pre-filed December 1, 2007, and ordered printed.

TERRY L. SPIELER, Secretary.

3680S.011

## AN ACT

To repeal sections 600.011 and 600.042, RSMo, and to enact in lieu thereof four new sections relating to the public defender system.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 600.011 and 600.042, RSMo, are repealed and four  
2 new sections enacted in lieu thereof, to be known as sections 600.011, 600.042,  
3 600.047, and 600.092, to read as follows:

600.011. The following words and phrases as used in this chapter have the  
2 following meanings, unless the context otherwise requires:

3 (1) "Assigned counsel" [means], private attorneys who are hired by the  
4 state public defender director to handle the cases of eligible persons from time to  
5 time on a case basis;

6 (2) "Chief deputy director" [means], the attorney appointed by the  
7 commission to assist the state public defender director and to exercise the duties  
8 and powers of the director in his absence or upon his resignation;

9 (3) "Commission" [means], the public defender commission;

10 (4) "**Contract counsel**", **private attorneys hired by the state public**  
11 **defender director under subsection 3 of section 600.047**;

12 (5) "Defender(s)", includes both attorneys which serve as staff attorneys  
13 in the state defender system and assigned counsel who provide defense services  
14 on a case basis, but does not include **contract counsel**, secretarial,  
15 investigative, social service, or paraprofessional staff;

16 [(5)] (6) "Director" [means], the state public defender director;

17 [(6)] (7) "Eligible person" [means], a person who falls within the  
18 financial rules for legal representation at public expense prescribed by [section]

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

19 sections 600.047 and 600.086;

20 [(7)] (8) "State public defender system" [means], a system for providing  
21 defense services to every jurisdiction within the state by means of a centrally  
22 administered organization having a full-time staff **supplemented with**  
23 **contract counsel under subsection 3 of section 600.047.**

600.042. 1. The director shall:

2 (1) Direct and supervise the work of the deputy directors and other state  
3 public defender office personnel appointed pursuant to this chapter; and he and  
4 the chief deputy director may participate in the trial and appeal of criminal  
5 actions at the request of the defender or upon order of the commission;

6 (2) Submit to the commission, between August fifteenth and September  
7 fifteenth of each year, a report which shall include all pertinent data on the  
8 operation of the state public defender system, the costs, projected needs, and  
9 recommendations for statutory changes. Prior to October fifteenth of each year,  
10 the commission shall submit such report along with such recommendations,  
11 comments, conclusions, or other pertinent information it chooses to make to the  
12 chief justice, the governor, and the general assembly. Such reports shall be a  
13 public record, shall be maintained in the office of the state public defender, and  
14 shall be otherwise distributed as the commission shall direct;

15 (3) With the approval of the commission, establish such divisions,  
16 facilities and offices and select such professional, technical and other personnel,  
17 including investigators, as he deems reasonably necessary for the efficient  
18 operation and discharge of the duties of the state public defender system under  
19 this chapter;

20 (4) Administer and coordinate the operations of defender services and be  
21 responsible for the overall supervision of all personnel, offices, divisions and  
22 facilities of the state public defender system, except that the director shall have  
23 no authority to direct or control the legal defense provided by a defender to any  
24 person served by the state public defender system;

25 (5) Develop programs and administer activities to achieve the purposes  
26 of this chapter;

27 (6) Keep and maintain proper financial records with respect to the  
28 providing of all public defender services for use in the calculating of direct and  
29 indirect costs of any or all aspects of the operation of the state public defender  
30 system;

31 (7) Supervise the training of all public defenders, assistant public

32 defenders, deputy public defenders and other personnel and establish such  
33 training courses as shall be appropriate;

34 (8) With approval of the commission, promulgate necessary rules,  
35 regulations and instructions consistent with this chapter defining the  
36 organization of his office and the responsibilities of public defenders, assistant  
37 public defenders, deputy public defenders and other personnel;

38 (9) With the approval of the commission, apply for and accept on behalf  
39 of the public defender system any funds which may be offered or which may  
40 become available from government grants, private gifts, donations or bequests or  
41 from any other source. Such moneys shall be deposited in the state general  
42 revenue fund;

43 (10) Contract for legal services with private attorneys on a case-by-case  
44 basis and with assigned counsel as the commission deems necessary considering  
45 the needs of the area, for fees approved and established by the commission;

46 (11) With the approval and on behalf of the commission, contract with  
47 private attorneys for the collection and enforcement of liens and other judgments  
48 owed to the state for services rendered by the state public defender system.

49 2. No rule or portion of a rule promulgated under the authority of this  
50 chapter shall become effective unless it has been promulgated pursuant to the  
51 provisions of section 536.024, RSMo.

52 3. The director and defenders shall, within guidelines as established by  
53 the commission and as set forth in subsection 4 of this section, accept requests  
54 for legal services from eligible persons entitled to counsel under this chapter or  
55 otherwise so entitled under the constitution or laws of the United States or of the  
56 state of Missouri and provide such persons with legal services when, in the  
57 discretion of the director or the defenders, such provision of legal services is  
58 appropriate.

59 4. The director [and defenders] **or his or her designee shall assign a**  
60 **defender or contract counsel to** provide legal services to an eligible person:

61 (1) Who is detained or charged with a felony, including appeals from a  
62 conviction in such a case;

63 (2) Who is detained or charged with a misdemeanor which will probably  
64 result in confinement in the county jail upon conviction, including appeals from  
65 a conviction in such a case;

66 (3) Who is detained or charged with a violation of probation [or parole],  
67 **except as provided in section 600.092;**

68 (4) Who has been taken into custody pursuant to section 632.489, RSMo,  
69 including appeals from a determination that the person is a sexually violent  
70 predator and petitions for release, notwithstanding any provisions of law to the  
71 contrary; **and**

72 (5) For whom, **in a case in which he or she faces a loss or**  
73 **deprivation of liberty**, the federal constitution or the state constitution **or any**  
74 **law of this state** requires the appointment of counsel[; and

75 (6) For whom, in a case in which he faces a loss or deprivation of liberty,  
76 any law of this state requires the appointment of counsel;]. However, **neither**  
77 the director [and the], **defenders, nor contract counsel** shall [not] be required  
78 to provide legal services to persons charged with violations of county or municipal  
79 ordinances.

80 5. The director may:

81 (1) Delegate the legal representation of any person to any member of the  
82 state bar of Missouri;

83 (2) Designate persons as representatives of the director for the purpose  
84 of making indigency determinations and assigning counsel.

**600.047. 1. Subject to appropriations, moneys from the general**  
2 **revenue fund may be appropriated for the purpose of paying contract**  
3 **counsel to represent eligible indigent persons:**

4 (1) Who are:

5 (a) Charged with a misdemeanor offense or a misdemeanor  
6 probation violation, which will likely result in confinement in the  
7 county jail and for which the federal or state constitution or any law  
8 of this state requires the appointment of counsel. The provision of  
9 legal services for such probation violation shall meet the requirements  
10 of section 600.092;

11 (b) Charged with a violation of section 570.120, RSMo; or

12 (c) Parties in a criminal child support enforcement action that  
13 will likely result in confinement in the county jail or imprisonment in  
14 a correctional facility and for which the federal or state constitution or  
15 any law of this state requires the appointment of counsel; or

16 (2) When a defender in the state public defender system has a  
17 conflict of interest when providing legal services under subsection 4 of  
18 section 600.042.

19 2. The office of the Missouri state public defender shall have the

20 authority to:

21 (1) Enter into contracts with qualified private counsel for the  
22 provision of indigent defense services;

23 (2) Process contract counsel payments and litigation expense  
24 reimbursements from such moneys; and

25 (3) Make such rules as are necessary for the efficient  
26 administration of the provisions of this section. Any rule or portion of  
27 a rule, as that term is defined in section 536.010, RSMo, that is created  
28 under the authority delegated in this section shall become effective  
29 only if it complies with and is subject to all of the provisions of chapter  
30 536, RSMo, and, if applicable, section 536.028, RSMo. This section and  
31 chapter 536, RSMo, are nonseverable and if any of the powers vested  
32 with the general assembly pursuant to chapter 536, RSMo, to review, to  
33 delay the effective date, or to disapprove and annul a rule are  
34 subsequently held unconstitutional, then the grant of rulemaking  
35 authority and any rule proposed or adopted after August 28, 2008, shall  
36 be invalid and void.

37 3. Employees of the Missouri state public defender system and  
38 members of the public defender commission may not serve as contract  
39 counsel.

40 4. Moneys from the general revenue fund shall not be used to  
41 provide legal services to persons charged with county or municipal  
42 ordinance violations or misdemeanor offenses in which the accused is  
43 not facing the possibility of jail time if found guilty or pleading  
44 guilty. Nor shall moneys from the general revenue fund be used to  
45 provide legal services to persons who are a party in a criminal child  
46 support enforcement action in which the accused is not facing the  
47 possibility of jail time or imprisonment if found or pleading guilty.

600.092. Notwithstanding any other provision of law to the  
2 contrary, no defender or contract counsel shall be required to provide  
3 legal services to an eligible person for a violation of probation unless  
4 such violation could result in the charging of a separate offense.